

EVASION AND AVOIDANCE OF USURY LAWS

JACKSON R. COLLINS*

The problem of usury in its various forms is described in the earliest records of mankind. Any compensation for the use of money was usury in Biblical times and the medieval Church held that such usury was in violation of its doctrine and teachings. It might be noted in passing, however, that in the parable of the talents (Matthew XXV:14) the placing of money for hire was approved. At the time of the American Declaration of Independence, reasonable compensation for the use, forbearance or detention of money was the commercial custom and approved by the statutes of England and the various colonies. The statutes limiting compensation for the use of money became known as usury laws. Compensation for the use of money is now known among us as "interest." The taking of an unlawful excess over and above the amount of compensation permitted by statute throughout America is known as "usury." Throughout this paper we are primarily studying ways and means of taking a lawful or unlawful excess as compensation for the use, forbearance or detention of money.

Avoidance is a lawful act or deed which is accomplished by acting within the law. Evasion is a violation of law, a cutting of corners or an illegal hurdling of legal barriers, and constitutes a wrongful or illegal act. Passing through a loophole in imperfect legislation is avoidance, while giving an untrue meaning to a colorable lending transaction is evasion. The difference between avoidance and evasion of law can be illustrated graphically by the analogy of a barrier across a city street. If the pedestrian crawls through or over the barrier, that would be evasion; if, however, he turned and went around one or the other of the city blocks adjoining and reached the other side of the barrier by unbarricaded open streets, it would be avoidance. Such is the content and meaning of these two words as used in this paper.¹ It should not be thought that the term "avoidance" necessarily carries any opprobrium with it. Whether it does or not will depend upon the proximity to law-breaking which the particular fact situation reveals.

Webb's treatise on usury states that there are four elements to every act of usury, and many authorities claim there is another element, namely, intention. The four necessary elements are: (1) a loan; (2) a fixed obligation to pay; (3) a certain amount due; (4) an excess of compensation beyond that permitted by statute.

* A.B., 1917, M.A., 1920, Washington and Lee University; LL.B., 1924, Harvard University. Member of Maryland, New York and District of Columbia bars. Secretary, Conference on Personal Finance Law. Of counsel to Beneficial Industrial Loan Corporation. ¹ See *U. S. v. Isham*, 84 U. S. 496 (1873).

In England there has been no usury statute for many years, and there the wrong of usury consists of "an unconscionable agreement" to pay an unreasonable compensation for a loan. The American usury problem in the courts does not involve such ethical questions as to what is "conscionable" or "unconscionable." It is restricted to measuring the compensation contracted for, paid or received upon a loan, and whether that compensation falls within maximum limits permitted by the statute against which it is measured.

In order to measure the compensation, it must be reduced to a common denominator which is arrived at by considering the amount of the loan, the period of time lent (generally on an annual basis), the amount of compensation for the use, forbearance or detention—the relationship being expressed in a percentage. The formula may be expressed: amount of compensation placed on time basis (generally a year), divided by amount of loan, yields the annual percentage received. If the percentage received or contracted for is within the statutory maximum of the usury statute, then only lawful interest has been received; but if there is any excess above the permitted maximum of the statute, then there is usury or an illegal charge.

Ever since interest was judicially recognized as lawful when within reasonable limits, numerous efforts have been sought to avoid or overcome those limitations. Much skill and thought have been expended in that effort. The inability to get by that limitation was well expressed by Lord Mansfield in *Floyer v. Edwards*² in the following famous quotation:

"Where the real truth is a loan of money, the wit of man cannot find a shift to take it out of the statute."

In spite of this clear statement more than 150 years ago, efforts to "find a shift" have continued till the present moment.

EVASIONS

It has often been said that usury is the bargain struck between need and greed. If these two forces are unrestrained, then the law does not worry either party. Only as they are tempered are the stark realities concealed and clothed in the habitual vesture of the parties.

Short term loans in small amounts or midget loans.

The most notorious of usurers in modern city life are the "five for six boys" in the larger cities. The designation grows out of the practice of making loans of \$5 for a week or two weeks and exacting a promise to repay \$6. No interest rate is stated. By reputation these lenders are generally gangsters or racketeers who readily admit their business is illegal, and who enforce their contracts by fear of brute force.³ They are "vest pocket" lenders with no office, existing in every large size town of America. The motion pictures of their activities place their locations at cigar stands

² 1 Cowp. 112 (1774).

³ *People v. Faden*, 271 N. Y. 435, 3 N. E. (2d) 584 (1936), *aff'g* 247 App. Div. 777, 286 N. Y. S. 405 (1936); *People v. Blumenthal*, 157 Misc. 943, 284 N. Y. S. 873 (1936).

and lobbies in big office buildings, or merely show a man with a slouch hat on a street corner.

There is another kind of lender of small sums for a short term. He is the foreman in an industrial plant, or even a minor employee in such an establishment, who by nature drifts into the business of lending to his fellow employees till the next pay day.

Side agreements.

The use of side agreements occurs in Minnesota and in most towns of the Northwest from St. Paul to Seattle. Under these the lender makes one loan but takes two instruments, each lawful on its face. The illegality is only ascertained by getting the surrounding facts by parol evidence and putting the two instruments together as different parts of the same single transaction. Admittedly, the obtaining of evidence outside of a written instrument has its difficulties both in the court room and without it. The illegality is patent when all the facts are known; there is no contention otherwise. Such practice has recently been made a matter of record in *State of Minnesota ex rel. Goff v. O'Neil, doing business as Metro Loan Co.*⁴

Disregard of statute.

An outright contract for a rate of interest in excess of that permitted by statute—a complete disregard of the law. This practice is common in many places in the Southwest. Many Texas banking institutions lend money at 10% annually and take out the interest at the time of making the loan, and then require equal instalment payments. For instance, they would take out \$12 from a \$120 loan, and require payment in 12 equal instalments of \$10 each. In Oklahoma varying high percentages are taken in utter disregard of the statutory maximum.

There still prevails in many places and in many phases of life the principle that a man's word is more binding than his bond. The Texas loan shark openly advertises that he makes "honor loans," *i.e.*, loans made that are for the current convenience of the borrower, but are admittedly illegal. Usury in this atmosphere is considered a minor wrong, if a wrong at all, and the ancient equity argument prevails that a borrower must do equity before equity grants relief.⁵

Maximum rates as if there were no instalments coupled with insurance requirements.

The practice of stating maximum rates as if there were no instalments is the flagrant violation by many personal loan departments of banks throughout the nation. It can be said that at least half of the banks having personal loan departments are practicing open evasion of the usury law of their state. The garb in which the transactions are cloaked for such personal loans by banks is the familiar terminology of

⁴ 205 Minn. 366, 286 N. W. 316 (1939).

⁵ *Ex parte Hughes*, 133 Tex. 505, 129 S. W. (2d) 270 (1939). For the extent of this practice see *Berry v. City of Fort Worth*, 132 Tex. 599, 124 S. W. (2d) 842 (1939); *rev'd* 110 S. W. (2d) 95 (Tex. Civ. App. 1937).

everyday banking practice. The loan is discounted at the customary rate within the state, such as 5%, 6% or 8%; then substantially equal payments are required either on the note itself or in an "account." The borrower is told he is able to borrow, say at 5% per annum. He signs a note so reading and if he requests it, he may get a copy to take home with him. He is orally told that he must save systematically and, therefore, must make payments at regular intervals, weekly or monthly. Sometimes a charge is made for "an insurance reserve" against loss.⁶

It is a truth that there is a risk inherent in every loan transaction. This is recognized by everyone when there is no collateral. The conservative banking rule, if not a fundamental requirement, is that the collateral should have a marketable value in excess of the amount of the promise. The excess should be sufficient for a reasonable margin of safety. The collateral is a secondary alternative right to be availed of, if the primary promise is not fulfilled or performed.

Every borrower instinctively knows that, if he does not have collateral to meet the above standards, he will be required customarily to do something to bring the quality of the loan within bankable standards. The average borrower, therefore, is willing to provide some insurance or something like insurance if so requested by a banker. He is especially inclined to do so if he is unfamiliar with the instruments and tools evidencing a credit transaction.

Personal loan departments of banks are recent innovations. The general public must be informed about their practices and requirements. The members of the general public know banks are intensely regulated credit institutions and generally believe their officers and personnel are reliable and reputable persons. Consequently they accept requirements in new situations without question (at least without court contest), when the recognized credit institution demands these plausible and obviously fair and just additions to bring its loans within bankable standards.

Thus in many places the unsecured loan requires an insurance policy on the life of the borrower. This is usually a term policy. This may be by a single policy for a single borrower, or it may be a group policy upon a group of borrowers, or it may be a blanket policy with individual certificates. The net return in protection to the lender is the same under any of the three plans. The cost of such protection is quite different because of difference in work and detail. Each loan is individualistic; such is our law, and each borrower is accustomed to think of his own credit problems and not of himself as a member of a group or a class. Being unfamiliar with distinctions in insurance rights and the differences between policies and certificates, he accepts what is suggested and it unwittingly becomes his own act.

If short cuts have been taken to accomplish these ends, then there is evasion; also, if there are participations in insurance premiums, there is evasion; or if forms and safeguards have been omitted and a naked reserve used by the lender under the nomenclature of "self-insurance," it is an evasion. Many times the use of an insurance company is completely dispensed with. Practices of this sort by national banks have

⁶ See PATON'S DIGEST (Student's ed. 1926) §3844a.

been frowned on in a statement of policy issued by the United States Comptroller of Currency in September, 1940, and condemned by other authorities as well.⁷ One of the best known "plans" for effectuating the practices under discussion is the Vee Bee System which was declared "lawful" by former United States Attorney General Homer S. Cummings, although adversely ruled upon by the above authorities.⁸ Every bank by acceptance of its charter and use of its enabling statute undertakes to obey the usury law of the state in which it does business.

AVOIDANCE

An act of avoidance is always in compliance with the law. It is, therefore, necessary to be alert to the four elements essential to an act of usury named above. In order to obtain an avoidance, the activity must be distinguishable as to at least one of these elements. The distinction must be a genuine departure, constituting an actual difference. Some of the outstanding acts of avoidance are discussed below.

Purchases of choses in action.

(A) *Sales financing.* The financing of a genuine sale of merchandise by allowing the purchase price to be paid in instalments has been declared by the courts in every state to be beyond the usury statute. The argument was presented again and again that the seller had made no loan; he intended no loan, but had merely granted a commercial favor to the buyer in allowing payments in instalments rather than one lump sum. The courts have so found. However, they have overlooked the millenium-old fact that an agreement to forbear is in essence as much a loan as an extension of the use of a sum of money. Also they have avoided analysis of the sales price to determine what part, if any, was compensation for forbearance. They have generally taken the easy and popular road of finding that adequate proof has not been made of the amount of compensation for such forbearance. Today this is the greatest means of avoidance of the usury law throughout each of the 48 states.⁹

(B) *Salary buying.* A simple sale in anticipation of salary earned or to be earned is beyond the usury law. Many large companies have a two-week hold-back in the payment of wages. The employee has earned, e.g., \$25 between January 1 and January 14, which \$25 he receives on January 28. On January 15 the salary buyer may pay cash in the amount of \$22.50 and seek his collection of \$25 on January 28 from the paymaster or the employee himself. The details of this practice are brought out in the facts and issue of law set forth in *Sherrill v. Brantly*.¹⁰ Salary buying is an evil specifically regulated by every good and effective small loan statute. A small loan statute regulates not only "interest" but every "consideration" contracted for, collected or received by the lender.¹¹

⁷ Att'y Gen. of Pennsylvania, Formal Opinion No. 339, Apr. 29, 1940; Mich. Banking Comm'r, Ruling, Oct. 28, 1940.

⁸ See American Banker, July 23, 1940.

⁹ Berger, *Usury in Instalment Sales* (1935) 2 LAW & CONTEMP. PROB. 148, at 162-170.

¹⁰ 334 Mo. 497, 66 S. W. (2d) 529 (1933).

¹¹ See comments *infra* pp. 62-63.

Dual contracts approved by the legislature.

(A) *Building and loan associations.* The oldest and most renowned of the dual contracts are those provided under the building and loan statutes. Here the effective rate and cost to the borrower are practically doubled. The device used is a loan at the contract rate for the entire term upon the original sum lent with interest payments on the entire amount; and at the same time, a requirement of a purchase of a share of stock or shares having a nominal value equal to the amount of the loan, and requiring instalment payments of the full purchase price.¹²

(B) *Morris Plan or industrial banks.* The first cousin to the building and loan principle is the Morris Plan. The difference here is that the owner-lender is better protected because he sells a debt piece and not a share in the business. Generally no interest is paid on the "certificate of indebtedness" until it has been fully paid for. In the case of most borrowers, as soon as the certificate has been paid for, it is used to cancel the loan upon which interest has been paid for the entire term upon the original sum lent as long as it was outstanding.¹³ There are other variations of this idea often developed under a statute called "Loan and Investment Company Act."

(C) *Similar corporations.* A descendant of the building and loan plan is the "similar corporation" in Georgia. The building and loan transaction is customarily limited to purchase of real estate, and the loan is secured by a mortgage on the real estate. The statute providing for the loan plus share-buying in the "similar corporation" does not require real estate as a part of the transaction; thus chattels and certificates are used as collateral. Also the "subscription price" for shares (which can be very scarce) may be at a premium.¹⁴

Collateral activities.

(A) *Activity charges.* This is the custom and practice of reputable banks. The amount, separate and apart from compensation for the use, forbearance or detention of money, is a charge for services rendered or reimbursement of expenses incurred. A protest fee on a defaulted note is a clear example of an activities charge. Charge for appraisal of collateral is a customary one. So far services rendered under an indenture securing an issue of bonds is another. All of these have long been recognized as means of additional income or profit that are incidental to a lending transaction.¹⁵ There are many other activities of the lender which avoid the usury law for which just and fair charges may be made.¹⁶ However, charge for these same activities would violate the small loan law.¹⁷

¹² See *Simpson v. Smith Saving Society*, 178 Ark. 921, 12 S. W. (2d) 890 (1929).

¹³ See *Mesaba Loan Co. v. Sher*, 203 Minn. 589, 282 N. W. 823 (1938); *Columbus Industrial Bank v. Miller*, 125 Conn. 313, 6 A. (2d) 42 (1939).

¹⁴ See *Gore v. Industrial Loan & Savings Co.*, 52 Ga. App. 401, 183 S. E. 499 (1936); *Peoples Bank v. Mayo*, 61 Ga. App. 877, 8 S. E. (2d) 405 (1940).

¹⁵ See *First National Bank v. Phares*, 70 Okla. 255, 174 Pac. 519, 21 A. L. R. 793 (1918); PATON'S DIGEST (Student's ed. 1926) §§503, 1408, 1776, 4464.

¹⁶ See *C. C. Slaughter Co. v. Eller*, 196 S. W. 704 (Tex. Civ. App. 1917).

¹⁷ *London Realty Co. v. Riordan*, 207 N. Y. 264, 100 N. E. 800 (1913); *Capital Loan & Savings Co. v. Biery*, 134 Ohio St. 333 (1938).

(B) *Genuine professional services.* This is an age-old practice. Every small town lawyer is accustomed to loan money either himself or for a client, and as an incident thereto, to get the legal business of title search and drawing the mortgage. He might also get a commission for making the loan on behalf of the lender or obtaining the money for the borrower.¹⁸

(C) *Sale of insurance.* 1. Insurance companies are one of the great sources of funds for loans. They also lend money directly. Prior to 1890 the universal rule was that insurance companies could not require the borrower to take out reasonable insurance. Today that rule is changed and a lender may require insurance at standard rates.¹⁹

2. Even when the insurance at standard rates was required by the lender in excessive amounts, it was not usurious. In an Arkansas case²⁰ an application for a small loan license was denied because indulgence in such a practice before the small loan act was passed did not warrant the belief that a similar business would be honestly, fairly and efficiently conducted to the advantage of the community.

3. In addition to taking the maximum rate of interest, the lender may require insurance at standard rates and act as a licensed insurance broker or an insurance agent, and retain the commission lawfully allowed.²¹

(D) *Legislative authorization recognizing incidental expense or service.* This approach is an outstanding characteristic of federal relief statutes making available financial aid or assistance to worthy borrowers. The statutes have recognized that appraisals were essential; that title searches had to be made for liens and delinquent taxes; and that papers had to be drawn and filed. Lastly, and maybe more important than any other feature, it was recognized that the lender could do, or cause to be done, these various activities cheaper than anyone else or any independent third party or group of third parties. These statutes fixed maximum allowances for these things.²²

(E) *Florida Limited Surety Companies.* The first known attempt by "high rate" lenders of small sums and makers of midget loans to avoid both usury statutes and small loan acts by a special insurance device has taken place in Florida within the last two years. In that state the surety insurance companies are now authorized to: "become sureties and guarantors upon bonds, *obligations, contracts and agreements*, and may become sureties upon bonds in judicial proceedings whether criminal or civil." (Italics supplied.)

¹⁸ Houghton v. Burden, 228 U. S. 161 (1913); Wallace v. Zinman, 200 Cal. 585, 254 Pac. 946, 62 A. L. R. 1341 (1927).

¹⁹ Heaberlin v. Jefferson Standard Life Insurance Co., 114 W. Va. 198, 171 S. E. 419 (1933).

²⁰ Jernigan v. Loid Rainwater Co., 196 Ark. 251, 117 S. W. (2d) 18 (1938).

²¹ Niles v. Kavanagh, 179 Cal. 98, 175 Pac. 462 (1918). Also see California Personal Property Brokers Act, Laws 1939, c. 952, §20.

²² Home Owners Loan Act of 1933, c. 64, §1, 48 STAT. 128 (1933), 12 U. S. C. §1462; National Housing Act, 48 STAT. 1246 (1934), 12 U. S. C. §1701; Federal Home Loan Bank Act, c. 522, §1, 47 STAT. 725 (1932), 12 U. S. C. §1422; production credit companies under the Farm Credit Administration, 50 STAT. 5 (1937), 12 U. S. C. §1020i-0 (Supp. 1940); Disaster Loan Act, 50 STAT. 19 (1937), 15 U. S. C. §605k-1 (Supp. 1940).

The special bill was introduced without these features being stressed in the 1939 legislative session and was enacted under the belief by the Florida authorities that it was in aid and furtherance of bail bonds. The language would indicate that bail bonds were secondary among the objects of this statute. Its true character and significance were recently discovered by Rolf Nugent, Director of Consumer Credit Studies at the Russell Sage Foundation.²³

Brokerage.

This is the charge made when a third party is a go-between between the borrower and the lender in negotiating the loan. With regard to this practice the courts have often declared a relationship to be different from that claimed and asserted by the parties. However, when the broker is genuine and the relationship exists in truth, the charge is good.²⁴

Exceptions to the usury statute itself by the legislature.

(A) *Credit unions.* These are of two kinds: (1) the state credit union, which is made an out-and-out exception to the usury law by fiat of the state legislature as in New York,²⁵ and New Jersey;²⁶ and (2) federal credit unions.²⁷ It has been declared that such federal credit unions are immune from the state usury law because it is a federal instrumentality and state sovereignty cannot interfere.²⁸

(B) *Small loan acts.* These laws rest upon various theories and principles of government. 1. A direct exemption from the usury statute by granting an extraordinary interest rate in the form of special privilege. This is the Roman idea—or as it might be called today the Fascist, Nazi or Communist idea—that the state may give and the state may take away. Illinois, Iowa and Missouri have such statutes providing for an extraordinary rate of interest with all other legitimate charges denied.

2. Retention of the limits of the usury statute and control over collateral activities in the form of a limitation of inherent rights. This is the English idea—which today might be called the democratic idea. Blackstone expressed it when he said, interest rates “alike for all.”²⁹ This theory would keep the same rate of interest and limit charges for other services either by fixed fees, as Nebraska and Colorado, or within a general overall limitation, as Tennessee and New Mexico.

(C) *Special statutes for particular classifications.* 1. Personal Loan Departments of Banks whose rates are regulated by special statutes, such as those in New York by Sections 114a and 200a of the Banking Law; and those in New Jersey under Chapter 238 of the Laws of 1936.

²³ Fla. Laws 1939, c. 518. See especially §10. Mr. Nugent's observations are set forth in a letter to J. M. Lee, Florida State Comptroller, Sept. 11, 1940.

²⁴ Houghton v. Burden, *supra* note 15; Niles v. Kavanagh, *supra* note 18.

²⁵ 4 N. Y. CONSOL. LAWS (McKinney, 1937), art. XI, §§450-480.

²⁶ N. J. REV. STAT. (1937), tit. 17, sub-title 2, pt. 2, c. 12, art. 1-16.

²⁷ 48 STAT. 1216 (1934), 12 U. S. C. §§1751-1770.

²⁸ See principles set forth in Tiffany v. National Bank of the State of Missouri, 85 U. S. 409 (1873); Farmers' and Mechanics' National Bank of Buffalo v. Dearing, 91 U. S. 29 (1875); Evans v. National Bank of Savannah, 251 U. S. 108 (1919).

²⁹ 2 COMMENTARIES, c. 30.

2. Consumer Discount Companies in Pennsylvania. To take advantage of this statute a company must qualify with the Secretary of Banking. By so qualifying it is entitled to lend amounts of money not in excess of \$1000 and discount the interest for the full term of the loan at 6% per annum, even though it may require the amount of the loan to be repaid in substantially equal instalments over the term of the loan. Such a requirement practically doubles the interest or makes it about 12% per annum.³⁰

3. Provident Loan Associations. These companies are authorized by statute or by special charters combining a special rate of interest or a particular schedule of charges, or both. They are semi-philanthropic. They are often limited dividend companies. Their characteristics vary from state to state and sometimes different rights and procedures are provided for in the same state. The companies in New York City, Detroit, Minneapolis and Dallas are outstanding examples.

WHERE AVOIDANCE TOUCHES EVASION AND MAY BECOME EVASION

Activities based both on the general principles of common law and the rights of legislative enactment slip from time to time and from situation to situation into either avoidance or evasion, or both, of usury statutes. Some illustrations follow:

Hazard agreements.

It will be recalled that one of the essential elements of usury was "a fixed obligation to pay." This meant that the obligation must be certain and not founded upon a genuine contingency. Bottomry and respondentia were founded upon the contingency of the hazards of the sea and of trade. The payment of compensation for these kinds of advances of credit was not "interest" and, therefore, could not be usurious. The "hazard agreement" is based upon this broad idea. An advance is made, a promise of payment is given conditioned upon such things as: (1) living until due date; (2) not losing an arm or leg or both; (3) having no auto accident; (4) that the auto would be neither stolen, nor wrecked, nor have its engine frozen; (5) and many other such things specified; and if the contingency should happen, then notice within 24 hours is required. Theoretically these are risks, but in reality the risks are negligible and without substance.³¹ It has been held such agreements were merely camouflage used in an effort to disguise a loan. The disguise failed.

Repeated purchases of salary.

An honest and true purchase of wages of an employee is not a loan and can not be usurious.³² However, the gross profit made on such a transaction is declared by

³⁰ PA. STAT. ANN. (Purdon, 1939), tit. 7, c. 27, §§761-1-19.

³¹ Doyle v. American Loan Co., 185 Ark. 233, 46 S. W. (2d) 803 (1932); Stuback v. Sussman, 281 N. Y. 719, 23 N. E. (2d) 544 (1939) 256 App. Div. 903, 8 N. Y. S. (2d) 141 (1938); Equity Service Corp. v. Agull, 250 App. Div. 96, 293 N. Y. S. 872 (1937), *rev'd* 158 Misc. 780 (Sup. Ct. 1936). Cf. Smith v. Orr, 33 Pa. D. & C. 689 (1938).

³² *Supra* p. 58.

the small loan act to be deemed to be interest for the application of that statute.³³ Regardless of any small loan statute, such repeated purchases have been declared to be loans and attempted evasions of the usury law,³⁴ while in Florida the legality of such practice has been held to be a jury question with unlawful intention a necessary element of illegality.³⁵ This Florida rule of law makes each case stand alone and results in no practical enforcement of either usury law or small loan act in such cases.³⁶

Guarantee or endorsements.

This is a simple and separate guarantee of a note by a friend for a consideration, or even by a straightforward company for a premium or a fee, which would not be considered interest on the loan. However, when it is merely a part of a circuitous route of a lender in making a loan, any consideration paid for such guarantee or endorsement to the lender's *alter ego* becomes a part of the interest, and the entire transaction is tainted with usury. The remedies for usury apply.³⁷ This is a common camouflage for illegal lenders. It is practiced in the province of Quebec, Canada, and in Texas, and in many American states between these places.³⁸ This device is good in form and, if genuine, is lawful. It has its legal basis in the inherent rights accorded individuals by the common law, while Florida "limited surety companies" rely upon legislative authorization.

Merchandise coupons.

This is a variation of legitimate collateral agreements. Here the lender sells a coupon which may be redeemed if the borrower will expend a further sum to buy merchandise. This merchandise may be groceries, clothes or other necessities. Many times it is luxuries which the ordinary borrower of small sums cannot afford. The coupon then becomes a blind to conceal a further profit. Ostentatiously the borrower is the voluntary purchaser of a book of coupons which may be used to pay for merchandise. If it was honest and straightforward, this plan is approved by the courts. Such a state of facts was in the stipulations or admitted by demurrer in the

³³ *Jannett v. Hardie*, 290 U. S. 602 (1933), *aff'g* *Jannett v. Windham*, 109 Fla. 129, 147 So. 296 (1933); *Dunn v. Ohio*, 282 U. S. 801 (1930), 122 Ohio 431, 172 N. E. 148 (1930); *Sweat v. Commonwealth*, 152 Va. 1041, 148 S. E. 744 (1929); *Palmore v. Baltimore & Ohio R. R.*, 156 Md. 4, 142 Atl. 495 (1928).

³⁴ *McWhite v. State*, 143 Tenn. 222, 226 S. W. 542 (1921); *Cotton v. Cooper*, 209 S. W. 135 (Tex. Comm. App. 1919), *aff'g* 160 S. W. 597; (Tex. Civ. App. 1913); *Portwood v. Bennett Trading Co.*, 184 Ga. 617, 192 S. E. 217 (1937).

³⁵ *Davidson v. Davis*, 59 Fla. 476, 521 So. 139 (1910); *Edwards v. State*, 62 Fla. 40, 56 So. 401 (1911); *Clark v. Grey*, 101 Fla. 1058, 132 So. 832 (1931). See also *State ex rel. Moore v. Gillian and Cobb, trading as Local Finance Co.*, 193 So. 751 (Fla. Sup. Ct. 1940).

³⁶ See *KILGORE, 240% LOAN SHARK RACKET* (1940) 116.

³⁷ *Farrell v. Kelly (Liberty Guaranty Co.)*, Tenn. Sup. Ct. Docket No. Davidson Equity No. 11 (1939).

³⁸ Also see *Penziner v. West American Finance Co.*, 133 Cal. App. 578, 24 P. (2d) 501 (1933), 10 Cal. (2d) 160, 74 P. (2d) 252 (1937); and *Wolf v. Pacific Southwest Discount Corp.*, 10 Cal. (2d) 183, 74 P. (2d) 263 (1937).

test cases of *Hogan v. Thompson*,³⁹ *Page v. Johnson*,⁴⁰ and *Hornsby v. Rush*.⁴¹ However, in 1940 Judge Rice of the Alabama Court of Appeals discovered the *Hornsby* case was being used as a blind to deceive the victims of illegal lenders, and he wrote a very able opinion declaring the practice of that particular lender usurious and illegal in the case of *Willis v. Buchman, doing business as Alabama Loan Co.*⁴² The case has been appealed on other grounds and is now pending a second rehearing before the Supreme Court of Alabama. The practice has been declared bad in the Texas case of *Glover v. Buchman*,⁴³ and likewise in the lower courts of Kentucky and Ohio.

Store order plan.

The very name of this plan would indicate it was lawful on its face. This is a variation of the merchant coupon system and is done on the store order basis after the fashion of the past generation of a shopper on a commission basis. However, this device is used by ingenious illegal lenders to avoid both the usury law and the small loan act. Here the lender purports to lend money for nothing or the customary contract rate. The lender's real profit is not obtained directly from the borrower, but indirectly from his failure to exercise his rights with the merchant or from the merchant. The store order practice having the best finesse is the kind of situation described in *Cash Service Co. v. Ward*.⁴⁴ Here the miner or railroad employee was subject to a two-week hold-back in wages. To illustrate, he had earned \$25 the two weeks ending November 30, but he could not get this until December 15. The lender offered and did advance him \$22.50 in ordinary check plus \$2.50 in accompanying coupon for a store order. The whole could be used at almost any store in town to purchase \$25.00 merchandise at regular prices. If not used together, the \$2.50 coupon was valueless; if so used, the merchant paid the lender a commission of \$2.50. The lender claimed he advanced money to the borrower-miner for nothing, therefore he was not subject to either the usury law or the small loan act. It was held he received a benefit in excess of 6% per annum and, in truth, about 260% per annum. The *Cash Service* opinion contains an excellent analysis of both benefit and detriment theories of consideration and interest.

Cash order plan.

This is another scheme that appears innocent on its face. Here the outward practice is the giving of checks after the style of letters of credit or traveller's checks, and a fee is paid for each check used. It is declared that no loan has been made although there is a tacit understanding that the used check will not be repaid until next pay day. Here the element of a loan and a period of time is declared non-existent. In a friendly contested case involving this plan with alleged facts uncontradicted, it was found that no loan had been made and that the fees were for services and not compensation for

³⁹ 186 Ark. 497, 54 S. W. (2d) 303 (1932).

⁴⁰ 174 Okla. 516, 51 P. (2d) 301 (1932).

⁴¹ 26 Ala. App. 170, 155 So. 637 (1934).

⁴² Oct. 1938, Ct. of App.

⁴³ 104 S. W. (2d) 66 (Tex. Civ. App. 1937).

⁴⁴ 118 W. Va. 703, 192 S. E. 244 (1937).

the use, forbearance or detention of money.⁴⁵ Clearly on the facts before the court the case was correctly decided, but it is submitted that if there had been a fuller presentation of facts, it would have been found to be a violation of the usury statute.

Deceptive forms of purchase and sale.

This device is gray with age. It is, however, currently used very extensively. A recent large scale of operations disclosed a system of agents who purported to buy and sell autos and then sell the paper to a *bona fide* purchaser for value when transferring it to their principal. The agent is called a "bird dog" because he points out his victim to the illegal lender. The agent purported to buy and then lease to the victim his own auto, promising that after so many payments the car would again belong to its owner. He would then transfer the lease to the lender-principal. The collection is effected by threat of seizure of the mortgaged auto, and if the threat is not sufficient, then seizure on the street or at night and transportation of the car to another state is made.⁴⁶ However, where another was the real lender and there actually were two transactions, it was held there was no loan.⁴⁷

Alleged attorney fees on small loans.

This is another of the ancient practices.⁴⁸ Here the lawyer is the lender and he charges a fee to draft a note for a small sum. The fee is excessive for the value of the service. In those places where standard minimum fees are approved by the bench or the bar, or both, it is put into use with great ease. It may be grossly abused in connection with small loans. It works, however, in every small community. It was used extensively in Canada throughout the Dominion by means of a loophole in the Canadian Money-lender's Act. The practice was recently discovered and successfully prosecuted in Hartford, Connecticut, in *State v. Haymond, doing business as Colonial Discount Corporation*.⁴⁹ Twenty-five years ago it was the common practice in every New England town.^{49a} Today in the South it is an incident to "paper shaving." In California on a large loan where the fee was genuine and fair for services rendered, it was approved.⁵⁰

Abuse of minimum fees allowed by statute.

The Industrial Banking Act or Morris Plan Statute, as it is commonly called, provides for an investigation fee of \$2 for each \$100 or fraction thereof lent. The wording of this allowance is important. The principle of such allowance is good,

⁴⁵ *Cash Order Corp. v. McCann*, Circuit Court of Wayne County, Detroit, Michigan, 1938.

⁴⁶ *Personal Finance Co. of New York v. General Finance Co.*, 133 Pa. Super. Ct. 582, 3 A. (2d) 174 (1938); *State of Maryland v. Dashiell* trading as Liberty Loan Co., Circuit Court of Wicomico County, Salisbury, Md., 1939; *State v. Newell*, Schenectady Police Court, New York, decided Feb. 5, 1938; *State v. Fialkoff*, Albany Police Court, New York, decided Feb. 10, 1938; *State v. Gallup*, Albany Police Court, New York, decided April 1938.

⁴⁷ *People v. Sacks*, 276 N. Y. 321, 12 N. E. (2d) 425 (1938).

⁴⁸ See *supra* p. 60.

⁴⁹ Superior Ct., Hartford, Conn., decided Oct. 25, 1939.

^{49a} See editorial, *Hartford Daily Courant*, Oct. 26, 1940.

⁵⁰ *Wallace v. Zinman*, *supra* note 15.

right and proper. However, it is currently becoming the haven for unscrupulous lenders of midget loans for a short term and leads to repeated transactions covering a single continuous indebtedness. The lender makes \$10 and \$20 loans for two weeks, and thus finds legal sanction for the typical "high rate" practice of 260% per annum. This is done by making loans for a period not exceeding two weeks. Each time \$2 is charged, and the loan is \$20 or less. Two dollars is 10% of \$20. This may be done 26 times during the year. The gross is 260% per annum, and if the loan is \$10, it would be 520% per annum. It can be seen that the "five for six boys"⁵¹ thus find legislative authorization for their business. This loophole was closed in California by Senate Bill No. 61 of the Laws of 1940. It threatens serious trouble because of extensive abuse in the states of Washington and Utah, and is a potential trouble spot in many states. The leaders of industrial banking should correct this sore spot before it festers.

Dollar minimum in banking law.

This can lead to the same kind of abuse as described in the preceding paragraph. However, it is based on either the banking law or the general usury statute. Many states have an exception to the banking law that permits a dollar minimum payment for interest on small loan balances. This provides an open sesame for lenders on short-term midget loans and made it possible to carry on a high-rate loan business of 260% annually by making two-week loans of \$10 and \$20 and making it possible for the husband and wife to alternate biweekly the victims between themselves as separate lenders.⁵²

Use of Morris Plan practice without approval of legislature.

The Morris Plan system of dual contracts (loan contract and simultaneous purchase of investment certificate) is used in Tennessee and Oklahoma as a means of evading the constitutional limitations of interest without legislative approval. In Tennessee, Arkansas, Oklahoma, Texas and California there is a limit of 10% interest annually in the state constitution. This practice has been held bad in *State v. Whaley*,⁵³ and was found usurious in *England v. Mutual Loan & Thrift Corp.* in the Chancery Court at Knoxville, Tennessee on April 26, 1939.⁵⁴ Later an appeal was taken and subsequently dismissed by the appellant. The real reason for the dismissal is believed to be fear of an adverse decision sustaining the lower court findings and conclusions of law, as well as fear of publicity from a printed opinion in the reports to that effect. Likewise violation was admitted by default in *McConnell v. Peoples Finance & Thrift Co.* in Memphis, Tennessee, in the Chancery Court of Shelby County, docket No. 43003, on January 3, 1938. In *Stephenson v. Fidelity Loan & Thrift Corp.*, decided June, 1939, by Chancellor Swepston in the Chancery Court of Shelby County, such a transaction was declared a single contract at usurious interest,

⁵¹ *Supra* p. 55.

⁵² See opinion of Attorney General of West Virginia dated May 18, 1936, Homer A. Holt, Att'y Gen., by Ira J. Partlow, Ass't.

⁵³ 139 S. W. (2d) 255 (Tenn. Sup. Ct. 1939).

⁵⁴ Knox County, Docket No. 27761.

and not one contract of loan and a separate contract for instalment purchase of an investment certificate. This ruling was affirmed by the Court of Appeals during August 1940 and there is now pending a *writ of certiorari* before the Supreme Court of Tennessee.

All of these cases bear out the usurious character of such efforts when done without legislative approval. Since Tennessee has constitutional limitations, it may well be that a legislative act might be unconstitutional.⁵⁴ Likewise, the precedents of the agreed test cases on stipulations or demurrer have availed these illegal operations nothing to date.⁵⁵

Pawnbroker exception used in Utah.

By means of definitions in city ordinances a workable evasion was established until the Utah Banking Department set its energies to eliminate this abuse. Its acts and results are described in the Department's 1940 Biennial Report at page 10 in the following words:

"Prior to 1938 and particularly during the early part of 1938, this department was faced with a serious loan situation throughout the state. For some time past there were quite a number of salary loan offices operating within the state in addition to the legitimate small loan agencies operating under and pursuant to the laws of the State of Utah and duly licensed and supervised by the banking department. The latter companies are permitted by law to loan in amounts not exceeding \$300 and to charge interest at the rate of 3% per month on unpaid balances. The former type, the salary loan offices, commonly designated as 'loan sharks' were operating under various subterfuges, some with city licenses and some with no licenses at all. This type of company was loaning as a rule amounts from \$5 to \$50 and were charging anywhere from 5% to 20% per month or as much more as they thought the traffic would bear. Prior to this time representatives of this department called on these salary loan offices and made demand that they apply for licenses from this department and thus come under the regulations of the law and this office. However, none of these so-called 'loan shark' offices did apply for licenses and continued to charge their exorbitant rates of interest.

"After several complaints were made to this office with respect to the operations of these unlicensed lenders, the situation was directed to the attention of Harold W. Wallace, County Attorney. He was instrumental in causing many complaints to be issued followed by numerous arrests and prosecutions. Frequently these companies would appear by their agents. The companies were not incorporated and were operating in most cases under the name of a certain individual doing business under a company name. When an arrest was made, the individual would come into court, would enter his plea of guilty, pay his fine and then would disappear and some other agent would move in and conduct the business, and so in this way evade the law—being content to pay the fine rather than to discontinue business or to comply with the law by procuring a license from this department and be subject to the strict regulations of the small loan act.

"The prosecutions by Mr. Wallace's office became so numerous and the expense so great to these unlicensed operators that they finally struck upon another idea to try and evade the law. They were successful in procuring the passage by the Board of City Commis-

⁵⁴ Connor v. Minier, 109 Cal. App. 770, 288 Pac. 23 (1930).

⁵⁵ First Industrial Loan Corp. v. Price, Chancery Court, Davidson County, Nashville, Tenn., Feb. 18, 1939; Stone v. Provident Loan & Discount Corp., Chancery Court, Shelby County, Memphis, Tenn., Dec. 1939.

sioners of Salt Lake City of a certain ordinance designated as Section 1, Chapter 28, Revised Ordinance of Salt Lake City, 1934, as amended, by adding to said Chapter a new section known as Chapter 667X. By this ordinance they sought to have their business designated as pawnbrokers, and by this subterfuge hoped to be able to continue making their charges at the high rates, free from any regulation or supervision by the banking department, inasmuch as duly licensed pawnbrokers were exempt from the provisions of the small loan act and of course not subject to our regulations. Again this office in co-operation with Harold E. Wallace, County Attorney of Salt Lake County, commenced to systematically prosecute these cases, with the result that the 'loan sharks' faced with the possibility of continuous prosecutions for violation of the state law and faced further with the possibility of losing the principal sum of their loans, together with the interest that might become due thereon, decided to abide by the decision of the courts in this matter and in order to test the law and the constitutionality and legality of the ordinance referred to, arrests were made in the case of State of Utah, Plaintiff, vs. E. Z. Loan Company, Defendant; and in the case of State of Utah, vs. A. U. Daniels, Defendant. These cases were tried in the City Court of Salt Lake City. They were prosecuted by Mr. Wallace's office and conviction was obtained in the City Court. From this conviction an appeal was taken to the District Court and the matter was heard before the Honorable Roger I. McDonough, one of the judges of the District Court. Briefs were submitted by the said County Attorney's office and also by the Defendants. The matter was taken under advisement by the Honorable Judge McDonough and judgment was rendered by the Court upholding the decision of the City Court and sustaining the conviction. The defendants did not see fit to appeal to the Supreme Court and their convictions stood. These and all other companies similarly operating, due to the pressure brought upon them and due to court decisions against them decided to quit business or to sell out to legitimate licensed lenders and give up this field of operation, and we know of none now operating."

Use of hazard fee authorized by Missouri statute.

The Missouri Loan and Investment Companies Act,⁵⁶ authorizes a hazard charge of \$20 for a loan secured by a motor vehicle.

The report of the Small Loan Committee of the Missouri Bar for September 1940 declares that this fee is "a strange quirk" and is being abused and results in excessive charges to borrowers. It illustrates its report with a number of cases. The following is a description of one case:

"An employee of a manufacturing company on February 5, 1938, went to the office of a loan and investment company in Kansas City for the purpose of making a \$50.00 loan. He was successful. He received the sum of \$46.49 in cash and signed a note for \$70.00 to be repaid in semi-monthly installments over a period of six months. The charges, according to the lender, totaled \$23.51 of which \$20.00 was hazard fee, \$2.00 investigation fee and \$1.51 interest. The borrower had repaid a total of \$40.00 by the end of five months but he was somewhat behind in his payments. Accordingly, on June 13, 1938 he renewed the loan, received \$13.00 in cash, received a credit of \$3.00 on his old balance of \$30.00, thereby making the total amount to be financed \$40.00 for which he signed a new note for \$60.00 also payable in semi-monthly installments over a period of six months from date. By July 30, 1938 this borrower had occasion to need another small sum and he received \$10.00 from the company for which he signed a \$16.00 note to be repaid over a period of two and one-half months. He apparently was unable to make his payments

⁵⁶ MO. REV. STAT. (1929) art. 8, c. 32, as amended by Laws 1933, p. 199.

promptly because on August 13, 1938, he consolidated these two loans after having paid only \$15.00 on the \$60.00 and nothing on the \$16.00 note. On that date he received \$50.95 cash to which was added the net balances of the other two loans of \$43.85 and \$15.20; for these he signed a note for \$156.00 to be repaid in semi-monthly installments over a period of a year from August, 1938. By the first of February, 1939, just about six months later, he had paid on this newest loan, a total of \$42.00, but he was delinquent. Again he refinanced, received \$20.00 in cash and signed a new note for \$152.00. On this he made only one payment of \$6.50 and before February, 1939 had passed, his 1934 Model A Ford Coupe was repossessed for a claimed balance of \$145.50. In a period of a year this man received \$140.44 in cash, repaid a total of \$113.50, thereby leaving a principal balance of only \$26.94, but according to the method of refinancing used by this company and claimed by it to be permitted by the Loan and Investment Companies Act, he still owed over \$145.00. The total charges tacked on to the amount received by this borrower reached the staggering total of \$127.51. This Committee thinks that a law is wrong if it permits a lender, over a period of one year, to charge \$127.00 for the use of \$140.00."

Recently, during 1940, the Missouri Supreme Court held such a business under this act bad in *State ex inf. Roy McKittrick, Attorney General v. Universal Finance Company*.⁵⁷

INTERSTATE AND NATIONAL ASPECTS OF EVASION OR AVOIDANCE OF STATE USURY STATUTES

This business of illegal lending of small sums of money is not only conducted by the petty usurer, the "vest pocket" lender, the back-door and back-stairs lender, but also by great interstate or nation-wide groups. As in every business, there are lenders and satellites, and varying degrees of independence, allegiance and interrelation.

It is said of one foremost lender and leader among these in 1940 that he does not even know where all his offices and agents are. His operations are so extensive and so scattered, as well as so greatly camouflaged and hidden as not to be always discernible by him. He is presumed retired, and the business is presumed conducted by his associates. He has a right hand and a left hand and the "one knoweth not what the other doeth." The right hand obeys the law, or at least pretends to obey; the left hand uses the law only as a place of hiding in its game of hide-and-seek. The right hand has its legal advisor and banker in staid New England; the left hand has its nerve centers scattered in Miami, Florida; Atlanta, Georgia; Nashville, Tennessee; Houston, Texas; Salt Lake City, Utah; Denver, Colorado; and Los Angeles, California. This huge organization of the left uses every legal form known, such as the corporation, trust, association, partnership, individual, individual with trade name, leased property, out of state owners and holders of title, agents, traveling auditors, nominal loans with what may be called minus equities or mere understandings. It works for an alliance with local political forces and even with personages of state-wide importance and influence. It purports to be "home people" wherever it has the opportunity. It uses all of the principles of evasion and avoidance that have been heretofore described.

⁵⁷ No. 37294.

For evidence of the interstate aspects of evasion or avoidance of state usury laws it is suggested that the following materials be examined:

A. The pending suit of the Attorney General of Texas against the Miller Management Company of Nashville, Tennessee, for \$190,000 alleged franchise taxes. Docket No. 63699, District Court of Travis County, 53rd Judicial District of Texas. The newspapers advise the pleadings have been amended during November, 1940, by adding 36 additional places of business.

B. The action of the Attorney General of Nebraska to wind up four companies allegedly supervised by the Miller Management Company in Nebraska, with the following names: Industrial Finance Company, Prairie Loan Company, Standard Finance Company, South Side Finance Company, in the District Court in and for Douglas County, Nebraska, Docket No. 352, No. 240.

C. The Florida 240% loan racket described by John Kilgore in his book and article in this symposium.⁵⁸

D. The investigation of illegal lending activities in Austin, Texas, as set forth in the lower court hearings, and out of which the case of *Ex parte Hughes*,⁵⁹ grew.

E. The denial of personal property brokers license by the Commissioner of Corporations in California. In the *Matter of Pyramid Finance Corporation, Coastal Finance Corporation and 19 others*, before the Commissioner of Corporations of California, File No. 69850 LA, etc., October 7, 1939.

F. The action for an accounting described in *National Accounting Co. v. Dorman*.⁶⁰

Each mentioned case sets out a particular device or group of devices to evade or avoid the usury law of a state. It should be remembered that these practices have been going on for a long time. Note the date of *King v. State*, 71 S. E. 1093, 136 Ga. 709 (1911); *Spicer v. King Bros. & Co.*, 136 Tenn. 408, 189 S. W. 865 (1916).

There are other well-established interstate systems, smaller and specializing in particular devices. A *quo warranto* proceedings is now under way in Texas against one of these groups. Its leader is the author of the recently rejected Vee Bee system;⁶¹ he is also presently a defendant in Alabama, Arkansas and Texas. Another, a defendant in the Supreme Court of Georgia in *State ex rel. Boykin v. Ball Investment Co.*, decided December 6, 1940 is well known for his activities in Missouri and Kentucky. Another has his problems in six or seven states, especially in Nebraska and Kansas. Then there are many lesser figures in Florida, Georgia, Mississippi, Tennessee, Texas, Arkansas, Nebraska, Idaho, Montana and the Dakotas, with operations in five or six states. At present, the Carolinas are becoming the foremost and outstanding "happy hunting ground" for these operators and the practice of their devices, with renowned and reliable local political immunity from effective enforcement.

The fact that usury is not a crime in some states has been used in an effort to avoid the penalties of the law as in *State ex rel. Beck v. Basham*,⁶² where this abstract legal plea did not work. It was, however, a successful argument by a Texas lender doing business in Washington State in getting the case of *Roy Graupman v.*

⁵⁸ KILGORE, *op. cit.* *supra* note 36 *passim*.

⁵⁹ *Supra* note 5.

⁶⁰ 11 Fed. Supp. 872 (1935), *aff'd*, 295 U. S. 718 (1935).

⁶¹ See p. 58 *supra*.

⁶² 146 Kan. 181, 70 P. (2d) 24 (1937).

*Danner*⁶³ settled, and has from time to time been a means of ameliorating, if not avoiding the penalties of usury.

Usury laws and some of their pains and penalties have been evaded and avoided in notable cases by staying outside of the state where the usury was performed.

A. When an attempt was made in 1933 in North Carolina to prosecute Harry Drake of Chicago he was quoted in the papers as saying that he would spend every cent he had to keep from coming to trial in North Carolina. After having reference to the extradition proceedings carried in big headlines in the Chicago Tribune and other papers he apparently considered the attendant publicity was not worth the profit. He entered a plea of guilty to the charges against him in the Wake County Superior Court, paid a \$3000 fine, \$1000 in costs and \$7500 in license fees.⁶⁴ It is said he sold about 200 illegal offices in North Carolina to the operators of the largest group of such lenders in the United States.

B. In 1938 and 1939 attempts were made to prosecute W. L. Moore of Dallas in the Pulaski County Circuit Court, Little Rock, Arkansas. The criminal action is still pending, but the extradition has been allowed to expire for lack of sustenance. It has been reported that the local manager will plead guilty and be fined. In which case it may be presumed that his employer will pay the fine and the case will be closed.

C. The three Gorson brothers of Philadelphia were indicted in the Wicomico County Circuit, Salisbury, Maryland, during 1939. It was alleged that they used the "bird dog" system above described.⁶⁵ It was found, after a formal extradition hearing in Harrisburg, that they were in no wise "at fault." In fact, "the testimony was in their favor." Their routine is partially described in *Personal Finance Company of New York v. General Finance Company*.⁶⁶ Their organization is somewhat described in *General Finance Company v. Commissioner of Internal Revenue*,⁶⁷ and *Waggaman v. General Finance Co.*^{67a}

A game of the illegal lenders with interstate and nation-wide connections who seek continued evasion and avoidance of usury laws is to assist the "good elements" of the community in discovering and eliminating the persons who prey upon the borrowers of midget loans. They join the crusade against these cancerous abuses; they even contribute funds for that purpose. In addition to eliminating some of their "small fry" competition their purpose is to learn what is going on and then to do "the necessary" to protect their business. It is a kind of fifth column activity. It has happened recently in Memphis, Tennessee, and more or less throughout that state. Such a procedure ended up in Pensacola, Florida, in a Supreme Court case, *State ex rel. Moore v. Gillian and Cobb trading as Local Finance Co.*⁶⁸ Apparently some one never understood how this fake play became real and why it was not abandoned by the victims in the lower court.

When bar associations have sought to aid victims of the various devices considered, charges have been made against them on the ground of champerty, and the like. At least the claim was made that such organized assistance in free clinics was un-

⁶³ Docket No. 104148, Superior Court, Spokane, Wash.

⁶⁴ Charlotte (N. C.) Observer, Sept. 12, 1933, p. 11, col. 8, p. 13, col. 1.

⁶⁵ See p. 65 *supra*.

⁶⁶ *Supra* note 42.

⁶⁷ 32 B. T. A. 949.

^{67a} Decided by United States Circuit Court of Appeals for the Third Circuit, Nov. 27, 1940. See 9 U. S. L. W. 2347, Dec. 17, 1940.

⁶⁸ *Supra* note 35.

ethical.⁶⁹ In Georgia the complaint was taken to court and the issue decided adversely to the plaintiff by the Georgia Supreme Court in *Gunnells, trading as Acme Finance Co. v. Atlanta Bar Association*, on December 6, 1940. It may be assumed that every trick and device will be used to the limit to stop or at least delay enforcement of usury laws, and to avoid their consequences, when the possibility of enforcement becomes real.

The use of the mails is made by this large business of illegal lending. The mails may not be used to commit a fraud, such use being a crime.⁷⁰ Most of these operators use the mails for a system of reports, for collection letters and as a means of seeking new business. Clearly it is no fraud to use the mails to make illegal loans if the borrower understands the terms thereof. However, if the mails are used to make false representations which may be relied upon, and which are untrue, and which will result in a fraud, then another question is presented. Evasions through the mails that constitute fraud or are a part of the fraud are federal crimes.⁷¹ It is believed frauds may be worked both forward or backward.

While federal laws themselves may be used for attacking the loan shark, the federal framework makes it possible to carry out many of his activities in evading or avoiding state usury laws. The refusal of extradition for misdemeanors as part of comity between the states, *e.g.*, greatly aids the evasion and avoidance of the usury laws by the big interstate or nation-wide operators.

A good small loan statute breaks up this evasion or avoidance by leaving no technical loopholes. It must be like a chicken fence without a single hole or the fence is no good. It will have state-wide enforcement through a single person who is able to follow not only the local ramifications and camouflages, but also state, interstate, and nation-wide concealments and devices of evasion and avoidance.

⁶⁹ See Advisory Opinion on Ethics No. 141 of Oklahoma State Bar, (Sept. 1938) 8 OKLA. STATE B. J. 76, (1938) 24 A. B. A. J. 401.

⁷⁰ U. S. CRIM. CODE §215, 35 STAT. 1130 (1909), 18 U. S. C. §338.

⁷¹ U. S. v. Zalewski, 29 Fed. Supp. 755 (1940).